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OFFICE OF PETITIONS

In re Application of
John Westwood : DECISION ON APPLICATION
Application No. 09/753,433 : FOR
Filed: January 2, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. SJ0990037US10 :
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)," filed January 26, 2004. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred thirty-one (231) days to two hundred thirty-three (233) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred thirty-three (233) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 11, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 231 days. On January 26, 2004, applicant timely¹ submitted an application for patent term adjustment (with required fee). The Office determined entitlement to a period of adjustment of 233 days for the Office mailing a first notice under 35 U.S.C. 132, fourteen months and 233 days after the filing date of this application. However, the PTA was reduced by 2 days for applicant's filing of a terminal disclaimer on October 10, 2003, which was 2 days after applicant had filed an initial response after non-final Office action. Applicant states that the application is not subject to a terminal disclaimer and there are no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application.

¹ PALM records indicate that the Issue Fee was received in the Office with a mailroom date of March 2, 2004.

Applicant is incorrect inasmuch as a terminal disclaimer was filed (and entered) in this application, and thus, the patent issuing from this application is subject to a terminal disclaimer.

Yet, applicant is correct that, as of the mailing of the notice of allowance, there were no circumstances constituting a failure to engage within the meaning of § 1.704. The filing of the terminal disclaimer did not occur under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution of the application. The terminal disclaimer was not filed either as a supplemental response (or a response correcting an omission) to applicant's response after non-final filed October 8, 2003. Both papers are present in the application file with dates of receipt thereon of October 8, 2003; the date of filing of the terminal disclaimer was incorrectly entered as October 10, 2003.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is two hundred thirty-three (233) days.

The \$200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 09-0466, as authorized. No additional fees are required.

The Office will forward the file to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

*Karin A. Ferriter
spcc*

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Revised PAIR Screen